

Appl. No. : 09/283,120
Filed : March 31, 1999

REMARKS

This Amendment is substantively the same as the amendment filed July 28, 2004 that the Examiner did not enter. Applicants have submitted this Amendment in order to simplify the procedure for allowing Claims 54-57. Under 37 C.F.R. § 41.33(b) and M.P.E.P. § 1206, the Examiner may enter this Amendment and allow the application. If the Examiner enters this Amendment, the appeal will no longer be necessary and there will be no need for the Examiner to prepare an Examiner's answer.

If the Examiner enters this Amendment, Claims 54-57 will be pending. Claims 1-53 will be cancelled without prejudice or disclaimer.

Claims 53 and 54 Have Been Rewritten in Independent Form as Claims 54-57

Applicants note with appreciation that the Examiner has indicated the allowability of Claims 53 and 54 if rewritten in independent form. Applicants note that Claim 53 is a multiple dependent claim that depends on Claims 38, 39, or 40. As a consequence of this multiple-dependency, in order to rewrite Claim 53 in independent form, Applicants were required to split Claim 53 into three claims. Accordingly, Applicants have cancelled Claim 53 without prejudice or disclaimer and have substituted new Claims 55-57. New Claim 55 is equivalent to Claim 53 as dependent on Claim 38 and is rewritten in independent form. New Claim 56 is equivalent to Claim 53 as dependent on Claim 39 and depends on allowable Claim 55. New Claim 57 is equivalent to Claim 53 as dependent on Claim 40 and is rewritten in independent form. As new Claims 55-57 stand in the place of Claim 53, there has been no change in the scope of the claims as a result of this amendment.

Claim 54 is a dependent claim that originally depended on Claim 53. Since new Claims 55-57 stand in the place of Claim 53, Applicants have amended Claim 54 to multiply depend on new Claims 55-57. The scope of Claim 54 is unchanged by this amendment.

Attached to this Amendment as Appendix A is a chart that shows that amended Claims 54-57 have identical scope to former Claims 53 and 54.

Claims 54-57 Are Allowable

Applicants have rewritten the allowable claims in independent form or to depend on an allowable independent claim. Accordingly, Applicants respectfully submit that Claims 54-57 are allowable and respectfully requests their allowance.

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Applicants have cancelled Claims 1-53 without prejudice or disclaimer for the sole purpose of expediting the issuance and enforceability of the allowable Claims 54-57. Applicants hereby reserve the right to present any of the cancelled claims in one or more continuation or divisional applications.

In light of the allowability of all pending Claims 54-57, Applicants respectfully submit that this application is in condition for allowance and respectfully request such action.

37 C.F.R. § 41.33(b) and M.P.E.P. § 1206 Make It Clear That The Examiner May Enter This Amendment Now And Allow This Application

Applicants thank the Examiner for his courtesy in conducting a telephonic interview with Applicants' attorneys on November 16, 2005. Applicants note with appreciation that the Examiner indicated in that interview that he would allow Claims 54-57 if they have the same scope as previous Claims 53 and 54, subject to an updated search.

In order to expedite allowance of Claims 54-57, Applicants have submitted this Amendment to overcome any procedural issues that may be perceived to allowance of Claims 54-57 after Applicants' filing of an appeal brief. Applicants note that 37 C.F.R. § 41.33(b) and M.P.E.P. § 1206 expressly provide for the entry of this Amendment and the allowance of this application. 37 C.F.R. § 41.33(b) states:

(b) Amendments filed on or after the date of filing a brief pursuant to § 41.37 may be admitted:

- (1) To cancel claims, where such cancellation does not affect the scope of any other pending claim in the proceeding, or
- (2) To rewrite dependent claims into independent form.

This Amendment complies with 37 C.F.R. § 41.33(b) and should be entered because it would do precisely what the rule specifies may be done: (1) cancel Claims 1-53 and (2) rewrite objected to dependent Claims 53 and 54 into independent form as Claims 54-57.

Further, M.P.E.P. § 1206 states that an examiner "must respond to all amendments filed after appeal has been taken and prior to termination of the appeal." Moreover, "[i]f the examiner determines that an amendment clearly places the application in condition for allowance, the examiner may enter the amendment and allow the application." M.P.E.P. § 1206. A copy of M.P.E.P. § 1206 is attached as Appendix B for the Examiner's reference.

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In accordance with 37 C.F.R. § 41.33(b) and M.P.E.P. § 1206, Applicants respectfully request that the Examiner enter the Amendment and allow Claims 54-57 as amended. Such action would, in addition to allowing the amended claims, resolve the pending appeal, as this Amendment cancels all of the claims pending in the appeal.

If any remaining issues can be resolved by telephone, the Examiner is invited to call the undersigned attorney at his direct line of (949) 721-2897.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: 12/8/2005

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**APPENDIX A: COMPARISON OF AMENDED CLAIMS 54-57 WITH PREVIOUS
CLAIMS 53 AND 54**

Comparison of Claim 53 as Dependent on Claim 38 with New Claim 55

<u>Claim 53 as Dependent on Claim 38</u>	<u>New Claim 55</u>
38. An online product auction system comprising an auction center, said auction center includes a microprocessor operably connected to a storage media, said product auction system comprising:	55. An online product auction system comprising an auction center, said auction center includes a microprocessor operably connected to a storage media, said product auction system comprising:
a current high bid value for a first product;	a current high bid value for a first product;
a first bid data for said first product, said first bid data includes a first bid and a second bid, said first bid is greater than said current high bid value, and said second bid is greater than said first bid;	a first bid data for said first product, said first bid data includes a first bid and a second bid, said first bid is greater than said current high bid value, and said second bid is greater than said first bid;
a second bid data for said first product, said second bid data includes a third bid and a fourth bid, said third bid is greater than said current high bid value, and said fourth bid is greater than said third bid; and	a second bid data for said first product, said second bid data includes a third bid and a fourth bid, said third bid is greater than said current high bid value, and said fourth bid is greater than said third bid;
a bid processing module which calculates and updates said current high bid for said first product.	a bid processing module which calculates and updates said current high bid for said first product;
53. The online product auction system of Claim 38, 39, or 40, further comprising:	

<u>Claim 53 as Dependent on Claim 38</u>	<u>New Claim 55</u>
a start minimum bid;	a start minimum bid;
a low minimum bid;	a low minimum bid;
a current minimum bid; wherein the current minimum bid, at the start of an auction, is equal to the start minimum bid;	a current minimum bid; wherein the current minimum bid, at the start of an auction, is equal to the start minimum bid; and
a seller proxy module configured to periodically determine whether a bid at least as great as the current minimum bid has been accepted, and if no such bid has been accepted, to adjust the current minimum bid downward to a value less than the start minimum bid but at least as great as the low minimum bid.	a seller proxy module configured to periodically determine whether a bid at least as great as the current minimum bid has been accepted, and if no such bid has been accepted, to adjust the current minimum bid downward to a value less than the start minimum bid but at least as great as the low minimum bid.

Comparison of Claim 53 as Dependent on Claim 39 with New Claim 56

<u>Claim 53 as Dependent on Claim 39</u>	<u>New Claim 56</u>
38. An online product auction system comprising an auction center, said auction center includes a microprocessor operably connected to a storage media, said product auction system comprising:	55. An online product auction system comprising an auction center, said auction center includes a microprocessor operably connected to a storage media, said product auction system comprising:
a current high bid value for a first product;	a current high bid value for a first product;
a first bid data for said first product, said first bid data includes a first bid and a second bid, said first bid is greater than said current high bid	a first bid data for said first product, said first bid data includes a first bid and a second bid, said first bid is greater than said current high bid

<u>Claim 53 as Dependent on Claim 39</u>	<u>New Claim 56</u>
value, and said second bid is greater than said first bid;	value, and said second bid is greater than said first bid;
a second bid data for said first product, said second bid data includes a third bid and a fourth bid, said third bid is greater than said current high bid value, and said fourth bid is greater than said third bid; and	a second bid data for said first product, said second bid data includes a third bid and a fourth bid, said third bid is greater than said current high bid value, and said fourth bid is greater than said third bid;
a bid processing module which calculates and updates said current high bid for said first product.	a bid processing module which calculates and updates said current high bid for said first product;
39. The auction system as defined in Claim 38, wherein said bid processing module further comprises:	[See the bolded Claim 56 language, below.]
a first calculation mode which calculates said high bid for said first product when said product auction system is in a first state; and	
a second calculation mode which calculates said high bid for said first product when said product auction system is in a second state.	
53. The online product auction system of Claim 38, 39, or 40, further comprising:	
a start minimum bid;	a start minimum bid;
a low minimum bid;	a low minimum bid;
a current minimum bid; wherein the current minimum bid, at the start of an auction, is equal to the start	a current minimum bid; wherein the current minimum bid, at the start of an auction, is equal to the start

<u>Claim 53 as Dependent on Claim 39</u>	<u>New Claim 56</u>
minimum bid;	minimum bid; and
a seller proxy module configured to periodically determine whether a bid at least as great as the current minimum bid has been accepted, and if no such bid has been accepted, to adjust the current minimum bid downward to a value less than the start minimum bid but at least as great as the low minimum bid.	a seller proxy module configured to periodically determine whether a bid at least as great as the current minimum bid has been accepted, and if no such bid has been accepted, to adjust the current minimum bid downward to a value less than the start minimum bid but at least as great as the low minimum bid.
[See the bolded Claim 39 language, above.]	56. The auction system as defined in Claim 55, wherein said bid processing module further comprises:
	a first calculation mode which calculates said high bid for said first product when said product auction system is in a first state; and
	a second calculation mode which calculates said high bid for said first product when said product auction system is in a second state.

Comparison of Claim 53 as Dependent on Claim 40 with New Claim 57

<u>Claim 53 as Dependent on Claim 40</u>	<u>New Claim 57</u>
40. An online product auction system comprising an auction center, said auction center includes a microprocessor operably connected to a storage media, said product auction system comprising:	57. An online product auction system comprising an auction center, said auction center includes a microprocessor operably connected to a storage media, said product auction system comprising:

<u>Claim 53 as Dependent on Claim 40</u>	<u>New Claim 57</u>
a current high bid for a first product, said current high bid is associated with a first bid data wherein said first bid data includes a first bid and a second bid, said first bid is greater than said current high bid, and said second bid is greater than said first bid; and	a current high bid for a first product, said current high bid is associated with a first bid data wherein said first bid data includes a first bid and a second bid, said first bid is greater than said current high bid, and said second bid is greater than said first bid;
a second bid data for said first product, said second bid data includes a third bid and a fourth bid, said third bid is greater than said current high bid, and said fourth bid is greater than said third bid.	a second bid data for said first product, said second bid data includes a third bid and a fourth bid, said third bid is greater than said current high bid, and said fourth bid is greater than said third bid;
53. The online product auction system of Claim 38, 39, or 40, further comprising:	
a start minimum bid;	a start minimum bid;
a low minimum bid;	a low minimum bid;
a current minimum bid; wherein the current minimum bid, at the start of an auction, is equal to the start minimum bid;	a current minimum bid; wherein the current minimum bid, at the start of an auction, is equal to the start minimum bid; and
a seller proxy module configured to periodically determine whether a bid at least as great as the current minimum bid has been accepted, and if no such bid has been accepted, to adjust the current minimum bid downward to a value less	a seller proxy module configured to periodically determine whether a bid at least as great as the current minimum bid has been accepted, and if no such bid has been accepted, to adjust the current minimum bid downward to a value less

<u>Claim 53 as Dependent on Claim 40</u>	<u>New Claim 57</u>
than the start minimum bid but at least as great as the low minimum bid.	than the start minimum bid but at least as great as the low minimum bid.

Comparison of Previous Claim 54 with Amended Claim 54

<u>Previous Claim 54</u>	<u>Amended Claim 54</u>
54. The online product auction system of Claim 53, further comprising a decrement amount, wherein the seller proxy module adjusts the current minimum bid downward by the decrement amount.	54. The online product auction system of Claim 55, 56, or 57, further comprising a decrement amount, wherein the seller proxy module adjusts the current minimum bid downward by the decrement amount.

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3. The brief can no longer be filed within the time period for reply to the action from which the appeal was taken.

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1206 Amendments and Affidavits or Other Evidence Filed With or After Appeal [R-3]

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37 CFR 41.33. Amendments and affidavits or other evidence after appeal.

(a) Amendments filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) and prior to the date a brief is filed pursuant to § 41.37 may be admitted as provided in § 1.116 of this title.

(b) Amendments filed on or after the date of filing a brief pursuant to § 41.37 may be admitted:

(1) To cancel claims, where such cancellation does not affect the scope of any other pending claim in the proceeding, or

(2) To rewrite dependent claims into independent form.

(c) All other amendments filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) will not be admitted except as permitted by §§ 41.39(b)(1), 41.50(a)(2)(i), 41.50(b)(1) and 41.50(c).

(d)(1) An affidavit or other evidence filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) and prior to the date of filing a brief pursuant to § 41.37 may be admitted if the examiner determines that the affidavit or other evidence overcomes all rejections under appeal and that a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented has been made.

(2) All other affidavits or other evidence filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) will not be admitted except as permitted by §§ 41.39(b)(1), 41.50(a)(2)(i) and 41.50(b)(1).

I. AMENDMENTS

A new amendment must be submitted in a separate paper. Entry of a new amendment in an application on appeal is not a matter of right. The entry of an amendment (which may not include a new affidavit, declaration, exhibit or other evidence) submitted in an application on appeal is governed by 37 CFR 41.33, not 37 CFR 1.116.

Amendments filed after the filing of a notice of appeal, but prior to the date of filing a brief, may be admitted only to:

(A) cancel claims;

(B) comply with any requirement of form expressly set forth in a previous action;

(C) present rejected claims in better form for consideration on appeal; or

(D) amend the specification or claims upon a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented. See 37 CFR 41.33(a).

If the examiner denies the entry of such an amendment, the examiner should use form PTOL-303, "Advisory Action Before the Filing of an Appeal Brief," to notify the applicant of the non-entry and the reason for non-entry.

Amendments filed **on or after** the date of filing a brief pursuant to 37 CFR 41.37 may be admitted only to:

(A) cancel claims, where such cancellation does not affect the scope of any other pending claim in the proceeding; or

(B) rewrite dependent claims into independent form.

Rewriting dependent claims into independent form as permitted under 37 CFR 41.33(a)(2) includes the following situations:

(A) rewriting a dependent claim in independent form by adding thereto the limitations of the parent claim(s); and

(B) rewriting an independent claim to incorporate therein all the subject matter of a dependent claim, canceling the dependent claim and in conjunction therewith changing the dependency of claims which had depended from the dependent claim being canceled to the amended independent claim that incorporates therein all the subject matter of the now canceled dependent claim.

If the examiner denies entry of an amendment filed on or after the date of filing a brief, the examiner should use form PTOL-304, "Advisory Action After the Filing of an Appeal Brief," to notify the applicant of the non-entry and the reason for non-entry.

Examiners must respond to all amendments filed after appeal has been taken and prior to termination of the appeal. If the examiner indicates (in the advisory action) that an amendment would be entered, it is imperative for the examiner to also state (in the same advisory action) how the individual rejection(s) set forth in the final Office action will be impacted by the entry of the amendment except where an amendment

merely cancels claims. If the examiner determines that an amendment clearly places the application in condition for allowance, the examiner may enter the amendment and allow the application. Except for amendments that meet the conditions set forth above, all other amendments submitted after the date of filing a notice of appeal will not be entered except as permitted by 37 CFR 41.39(b)(1), 41.50(a)(2)(i), 41.50(b)(1) and 41.50(c).

See MPEP 714.02, 714.12 and 714.13 for the treatment of amendments, affidavits and other evidence submitted after the mailing of a final rejection or a non-final rejection, but prior to the filing of a notice of appeal under 37 CFR 41.31(a)(1)-(a)(3). Any amendment, affidavit or other evidence filed after the mailing of a final Office action and on the same date as the notice of appeal will be treated by the Office as being filed prior to the notice of appeal and treated under 37 CFR 1.116. Any amendment, affidavit or other evidence filed after the mailing of a non-final Office action and on the same date as the notice of appeal will be treated by the Office as being filed prior to the notice of appeal and treated under 37 CFR 1.111.

II. AFFIDAVITS OR OTHER EVIDENCE

Affidavits or other evidence (e.g., declarations or exhibits) submitted after the date of filing a notice of appeal, but prior to the date of filing a brief pursuant to 37 CFR 41.37, may be admitted if the examiner determines that:

(A) the affidavits or other evidence overcomes all rejections under appeal; and

(B) a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented has been made.

If the examiner denies the entry of such an affidavit or other evidence, the examiner should use form PTOL-303, "Advisory Action Before the Filing of an Appeal Brief," to notify the applicant of the non-entry and the reason for non-entry.

If the examiner determines that an affidavit or other evidence clearly places the application in condition for allowance, the examiner may enter the affidavit or other evidence and allow the application. Except as noted above, all other affidavits or other evidence filed after the date of filing a notice of appeal pursuant to 37 CFR 41.31(a)(1)-(a)(3) will not be admitted except as permitted by 37 CFR 41.39(b)(1), 41.50(a)(2)(i) and 41.50(b)(1).<

An amendment>, affidavit or other evidence< received after jurisdiction has passed to the Board should not be considered by the examiner unless remanded >or returned< by the Board for such purpose. See MPEP § 1210 and § *>1211.02<.

Note that 37 CFR *>41.37(c)(1)(iv)< requires a statement as to the status of any amendment filed subsequent to the final rejection. See also MPEP § *>1205<.